

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

ADVOSERV OF NEW JERSEY, INC.

Case 22-CA-131230

and

1199 SEIU, UNITED HEALTHCARE
WORKERS EAST, NEW JERSEY REGION

ORDER DENYING MOTION TO REOPEN
THE RECORD AND FOR RECONSIDERATION

On March 11, 2016, the National Labor Relations Board issued a Decision and Order in this proceeding, finding that the Respondent violated Section 8(a)(3) and (1) by terminating Todd Kowinsky for his union activities and, independently, violated Section 8(a)(1) by discharging Kowinsky for conduct that occurred during the course of his protected concerted activity.¹ On March 18, 2016, the Respondent filed a Motion to Reopen the Record and for Reconsideration. On April 1, 2016, the General Counsel filed an opposition to the Respondent's motion.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Having duly considered the matter, we find that the Respondent has not identified any material error or demonstrated extraordinary circumstances warranting reopening the record or reconsideration under Section 102.48(d)(1) of the Board's Rules and Regulations. The Respondent seeks to reopen the record to admit testimony Kowinsky gave in a deposition in a

¹ *Advoserv of New Jersey, Inc.*, 363 NLRB No. 143 (2016).

New Jersey state court proceeding after the close of the Board's hearing.² The Respondent contends that Kowinsky's deposition testimony regarding the reasons for his discharge is inconsistent with his testimony in the earlier Board hearing and suggests that he perjured himself in the Board proceeding. We find this contention to be without merit. In both instances, Kowinsky testified that the Respondent terminated him for several reasons, including his union activity. See *Planned Building Services, Inc.*, 330 NLRB 791, 792 (2000) (denying motion to reopen the record to adduce subsequent witness testimony that was not materially inconsistent with prior testimony). Accordingly, we deny the motion.³

IT IS ORDERED, therefore, that the Respondent's motion to reopen the record and for reconsideration is denied.

Dated, Washington, D.C., June 7, 2016.

Mark Gaston Pearce, Chairman

Kent Y. Hirozawa, Member

Lauren McFerran, Member

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² The deposition occurred on February 4, 2016, while the case was pending before the Board on exceptions to the judge's decision.

³ We also find no merit in the Respondent's contention that the Board committed a material error of law by rejecting its defense, under *Wright Line*, 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), that it would have terminated Kowinsky even absent his union activities. Contrary to the Respondent's contention, the Board fully considered the Respondent's comparator evidence and the precedent it offered in support, including *Turtle Bay Resorts*, 353 NLRB 1242 (2009), reaffirmed and incorporated by reference at 355 NLRB 706 (2010).